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In the Supreme Court of the United States

OCTOBER TERM 1969

No. ~~891~~ 62

MONITOR PATRIOT CO.
NORTH AMERICAN NEWSPAPER ALLIANCE, INC.,
PETITIONERS,

v.

ROSELLE A. ROY,
EXECUTRIX OF THE WILL OF ALPHONSE ROY,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW HAMPSHIRE

Submitted by,
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Petitioners, Monitor Patriot Co., and North American Newspaper Alliance, Inc. pray that a writ of certiorari issue to review the "judgments on the verdicts" entered in the Supreme Court of New Hampshire in the above entitled case.

Opinion Below

The opinion of the Supreme Court of New Hampshire, in the case pending therein entitled *Roselle A. Roy, Executrix of the Will of Alphonse Roy* vs. *Monitor Patriot Co.*,

North American Newspaper Alliance, Inc., is reported at 109 N.H. — and at 254 A2d 832. A copy of the opinion is attached to this petition as Appendix "A".

Jurisdiction

The opinion of the Supreme Court of New Hampshire ordered "judgments on the verdicts" and was decided on June 30, 1969. A motion for re-hearing was seasonably made and was denied on July 30, 1969.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

Question Presented

This is an action for libel brought by the late Alphonse Roy and now by his widow as respondent. The petitioners, defendants below, were charged with publishing a column on September 10, 1960; known as the "D.C. Merry-Go-Round," written by Drew Pearson, defamatory of Roy. Pearson in this column discussed New Hampshire politics and the candidacy of Alphonse Roy and certain others for the Democratic nomination for United States Senator. In the course of the discussion of Roy's candidacy, Pearson referred to Roy as a "former small time bootlegger and later U.S. Marshal."

Roy brought suit against petitioners in Hillsborough County (New Hampshire) Superior Court and trial by jury was had in December, 1966.

The Trial Court denied timely defense motions for dismissal and judgment and charged the jury that, although Roy was a public official within the meaning of this Court's decisions in *New York Times* vs. *Sullivan*, 376 U.S. 254, and subsequent cases, the jury could return verdicts for the plaintiff without a finding of "reckless disregard of the truth" on the part of petitioners, if they found the "boot-

legger" reference to be a "purely private libel" unrelated to Roy's candidacy for public office.[1]

By its special verdicts, awarding ten thousand dollars ($10,000.00) against each respondent, the jury did so find. The Supreme Court of New Hampshire, in ordering judgment on the verdicts affirmed the action of the Trial Court permitting the jury to find that the reference to a candidate for the United States Senate as a "former small time bootlegger" was a "purely private libel", outside the scope of the constitutional privilege created in the *New York Times* case. The question presented, therefore, is:

Did the Supreme Court of New Hampshire, in sustaining verdicts against petitioners, incorrectly apply the principles of the *New York Times* case and its progeny by holding that the Trial Court acted correctly in permitting the jury to find that a reference to the adult criminal conduct of a candidate for the United States Senate was a "purely private libel", beyond the scope of the constitutional privilege established by this Court's opinion in *New York Times* vs. *Sullivan*?

Otherwise stated, the question presented is: Did the action of the Trial Court in permitting a libel verdict against petitioners without evidence of either knowing falsehood or reckless disregard of the truth, deprive petitioners and their readers, of their rights of freedom of speech and of the press guaranteed by the First Amendment in the circumstances of this case?

Constitutional Provisions Involved

The First and Fourteenth Amendments to the Consti-

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[1] The subsequent cases petitioners relied on below, and rely on here are: *Garrison* v. *Louisiana*, 379 U.S. 64; *Rosenblatt* v. *Baer*, 383 U.S. 75; *Time, Inc.* v. *Hill*, 385 U.S. 374; *Beckley Newspaper Corp.* v. *Hanks*, 387 U.S. 81, *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130; and *St. Amant* v. *Thompson*, 390 U.S. 727.

tution of the United States, as applied in *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), and subsequent cases.

Statement of the Case

This is an action in libel brought by the late Alphonse Roy against petitioners, the Monitor Patriot Co. (hereinafter "the Monitor"), publisher of a daily newspaper in Concord, New Hampshire, known as "The Concord Monitor" and the North American Newspaper Alliance (hereinafter "NANA") distributor of a large variety of syndicated features to newspapers throughout the country, including the "D.C. Merry-Go-Round" by the late Drew Pearson.

The claimed defamation arose out of allegations contained in a Drew Pearson column distributed to various newspapers, including five in New Hampshire, by NANA and published by the Monitor on Saturday, September 10, 1960. A copy of the Pearson column is attached hereto as Appendix B.

The plaintiff Roy complained of three items in the column: the allegation that he was a former "small time bootlegger," the allegation that the plaintiff had attempted to procure straw candidates to run with him in the 1960 Democratic senatorial primary, and the allegation that the plaintiff had acted in a politically unethical manner in assisting the Republican incumbent, Senator Styles Bridges, by filing the straw candidates. Of these complaints, for reasons explained hereafter, only the "bootlegger" reference remains in the case. It is this reference alone which provides the basis of the judgments here sought to be reviewed.

The Pearson column, Appendix B, was entirely about domestic politics. After naming certain Congressmen who obtained free rides home with the Air Force at the close

of Congress, the column focused exclusively on the New Hampshire political situation, with its major emphasis on the Democratic primary for the U.S. Senate.

At this time, the plaintiff Alphonse Roy was a candidate for the Democratic nomination for United States Senator. Roy was a veteran of New Hampshire politics, having first attained elective office thirty-six years before when he was elected to the New Hampshire House of Representatives. (Transcript, Vol. 7, page 142, hereafter abbreviated Tr. 7:142). He had also shared a seat in Congress for one term in 1936 after a famous disputed election with the Republican incumbent. (Tr. 7:144).

The Pearson column, insofar as it referred to Roy, was based on information provided to Pearson by various people active in the Democratic primary campaigns. Pearson had been told by one source, a man named Joseph Scott, that Roy had been a bootlegger (Tr. 5:46). Scott had described to Pearson a speakeasy he had been in run by Roy. (Tr. 5:47). Furthermore, other information provided by Scott concerning the criminal records of the straw candidates proved to be accurate. (Tr. 5:47).

The case was tried in Hillsborough Superior Court before a judge and jury in December, 1966. The Trial Court ruled, and the parties agreed, that Roy, as a candidate for the U.S. Senate, was a public official within the meaning of *New York Times v. Sullivan*. (See excerpt from Respondent's Brief below, attached hereto as Appendix C.) The parties also agreed that the principles of the *New York Times* case were applicable to this case. (Tr. 3:116-117), although plaintiff's counsel did not admit this on the appeal.

However, despite this agreement, no evidence was adduced at a trial that petitioners had been guilty of publishing the "bootlegger" allegation either with knowledge of its alleged falsity or in reckless disregard of its truth

or falsity, within this Court's teaching in *New York Times*. In fact, the only evidence on this issue indicated that these petitioners merely did not undertake any independent investigation of whether the plaintiff had been a bootlegger, but relied on the author, Drew Pearson. The then president of the Monitor testified:

> Q: "Did you have at your newspaper, Mr. Langley, any facilities to check whether what Mr. Pearson was saying in those regards was true or false?"
>
> A: "We have no means. We have to buy columns, the Associated Press news, and so on, and we have to take them on faith. We do not have the facilities or the means or the time to go back and re-check everything which is delivered to us, even by our own town correspondents." (Tr. 2:134)

The then city editor of the Monitor, Enoch Shenton, testified he undertook no independent investigation of the "bootlegger" reference because he himself had heard it reported that the plaintiff had been a bootlegger:

> Q: "Well, in regard to background and in information, what had you, if anything, heard about Mr. Roy?"
>
> A: "Well, I recall very early in my newspaper career hearing that he had been a bootlegger. In fact, I think when I was first a State House reporter, he was at that time a bootlegger. That was the impression I got from my contacts at the State House.
>
> Q: "You mean from stories around the State House?"
>
> A: "From information that was given to me."
>
> Q: "Well, some specific knowledge or general?"
>
> A: "General knowledge. I was too young to drink then."

Q: "And this occurred in the course of your duties around the State House?"

A: "Yes."

Q:: "On more than one occasion?"

A: "Frequently."

Q: "And this was before Mr. Roy was elected to Congress?"

A: "He was elected to Congress in 1936. This was before then.

Q: "So when you saw the story, is this why you printed it?"

A: "No. I saw nothing in the story that was likely to cause any trouble. That was my—would have been my motivation if I had seen anything that was damaging. I would have stopped it."

Q: "Did you have any personal ill will toward Mr. Roy?"

A: "No." (Tr. 9:32-33)

With regard to NANA, Drew Pearson testified:

Q: "(By plaintiff's counsel) Mr. Pearson, we'll try it this way: Under what circumstances, does NANA undertake to investigate the truth or falsity of factual material that you put into your column.

A: "Well, every day their editor reads the column and checks back with me on certain facts in the column Now, sometimes he may question something, sometimes he doesn't. Almost every day he'll have a few suggestions one way or the other. If there's some major question of which he is afraid has a risk of libel in it, then he will take it up with the manager of the syndicate, the manager of the syndicate will teletype back to me or get me on the telephone, and we will—I will tell him what my sources are, how good they

> are, whom I have talked to, and sometimes I will change something. Almost every day I'll change something at their suggestion. I think the day that I left Washington, which was—my memory is getting bad because I've been moving around so quickly. Thursday I left Washington, today's Friday, and there was something came up that I changed. I know there was, but I can't remember what it was. But at any rate, if it's a major question, we'll hash it out, and sometimes—frequently I'll make a change at their suggestion, and on occasion I've held up a column for a couple of days so we could go into it further. In any showdown, if I want to exercise my veto, I can do it." (Tr. 5:69-70)

The absence of such evidence is in part explained because the plaintiff was content to rest on a showing only that the petitioners did not independently verify the factual matters in the column in the erroneous belief that this alone could constitute "recklessness". (Tr. 8:241,255; 10:52,84). This Court's opinion in *St. Amant* v. *Thomson*, 390 U.S. 727 (1968), holding that:

> "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication."

makes clear that the failure to verify, standing alone, cannot constitute a reckless disregard for the truth. Consequently, under applicable Constitutional standards, there was no evidence of conduct amounting to "actual malice" which would defeat the constitutional privilege created by *New York Times*.

Manner in Which Federal Question was Raised

Petitioners moved for a nonsuit and a directed verdict at the conclusion of plaintiff's opening statement (Tr.

2:79), at the close of plaintiff's case (Tr. 8:202), and at the close of all the evidence (Tr. 10:55-56, 99). In each case petitioners relied on the constitutional privilege of freedom of speech and press as elaborated in the *New York Times* case and its progeny. Specifically, petitioners argued that the plaintiff's failure to introduce or even proffer evidence of knowing falsehood or recklessness required that the action against them be dismissed as a matter of federal constitutional law.

The Trial Court granted the petitioner NANA's motion at the close of the plaintiff's case, only insofar as the plaintiff sought recovery for the references in the column about his political ethics. (These were the allegations that he had filed straw candidates and surreptiously been aiding the Republican incumbent, Styles Bridges.) The Court ruled that as a matter of law no evidence of a reckless disregard of the truth on NANA's part had been presented and that these were matters to which the constitutional privilege of *New York Times* applied. (Tr. 8:220,255). Otherwise, petitioners' motions were denied, subject to exception. (Tr. 2:81; 8:219; 10:98; 118, 119).

Then, despite the agreement of plaintiff's counsel that the rule of *New York Times* applied to this case, the Trial Court *sua sponte*, and over vigorous objection, charged the jury that it might return a verdict for the plaintiff without any finding that either petitioner was guilty of "actual malice," or recklessness, if the jury found the bootlegger allegations to be "a purely private libel". *In fact, the Court so far failed to follow the New York Times case as to this allegation that it permitted the jury to return a verdict for the plaintiff, on the private libel theory, even though it found the bootlegger allegation to be truthful.* This was on the ground that the publication of this allegation could be found not to have been "on a lawful occa-

sion" or, in *New York Times* terms, not constitutionally privileged.[2]

As to the other allegations, concerning the plaintiff's lack of political ethics, the Court properly instructed the jury that no award could be made without a finding that petitioners were guilty of recklessness or knowing falsity, since the publication of these matters was as a matter of law "on a lawful occasion", or, in *New York Times* terms, constitutionally privileged. And, in response to a special question, the jury properly refused the plaintiff any award for these allegations and stated that its entire verdict represented damages for the "bootlegger" allegation. The jury therefore made no finding that either petitioner was guilty of a reckless disregard of the truth in its handling of the column. Consequently, the judgments in this case rest on a finding in favor of a public official plaintiff, a candidate for the U.S. Senate, who prevailed without a showing that petitioners were recklessly disregardful of the truth. As such, these judgments are in direct violation of petitioners' constitutional privilege to publish without fear of libel verdicts, defeasible only on a showing of "actual malice" as defined in *New York Times*.

Petitioners again raised their federal constitutional objection to the verdicts by motions for judgment notwithstanding the verdicts or, in the alternative, for a new trial. The motions were denied. (See the Reserved Case, attached hereto as Appendix E.)

Petitioners then raised their federal constitutional objections by appeal to the Supreme Court of New Hamp-

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[2] See pertinent portions of the Court's charge, attached hereto as Appendix D, in the latter portion of which the Court charged that, under common law, truth would be a defense only if the matters were published "on a lawful occasion" and for a "justifiable purpose."

shire. As they had done throughout the trial, petitioners argued that any adult criminal conduct of a candidate for the U.S. Senate is, as a matter of law, a subject to which the *New York Times* privilege applies and that no evidence sufficient to defeat the privilege had been presented. The Supreme Court, however, ordered "judgments on the verdicts". A motion for re-hearing, also on federal constitutional grounds, was denied.

Reasons for Granting the Writ

1. The decision below should be reviewed and reversed because it erroneously interprets this Court's opinions in *New York Times* and subsequent cases. Specifically the Supreme Court of New Hampshire erroneously held that the plaintiff could recover, despite his status as a public official, without proof of actual malice, on the theory that allegations about his adult criminal conduct could be found to be unrelated to his fitness as a candidate for the U.S. Senate.

2. The decision below should be reviewed because it raises important questions about the scope of the constitutional privilege created in *New York Times,* not previously ruled on. Specifically, it very precisely presents the question of whether there is still an area of "purely private libel" outside the scope of *New York Times* in which libel plaintiffs who are public officials may recover without proof of "actual malice".

3. The decision below should be reviewed and reversed because it misinterpreted this Court's opinion in *Garrison* v. *Louisiana,* 379 U.S. 64, as holding that the adult criminal conduct of a candidate for the U.S. Senate could be so "unrelated to his fitness for office" that an alleged libel reciting such conduct would be outside the scope of the *New York Times* constitutional privilege.

4. The decision below should be reviewed and reversed because it deprived petitioners of federally guaranteed constitutional rights of freedom of press and speech which, although seasonably raised, were consistently denied in the courts below.

Conclusion

For the reasons stated, petitioners pray that a writ of certiorari be issued to the Supreme Court of New Hampshire. In addition, petitioners respectfully request this Court to summarily reverse the judgment of the Supreme Court of New Hampshire concurrent with its issuing the writ of certiorari.

Respectfully submitted,

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APPENDIX A

Hillsborough,

No. 5780.

ROSELLE A. ROY, EXECUTRIX OF THE WILL OF ALPHONSE ROY

v.

MONITOR-PATRIOT CO.

NORTH AMERICAN NEWSPAPER ALLIANCE, INC.

Argued February 4, 1969.

Decided June 30, 1969.

Bois, Laflamme & Kalinski and *McLane, Carleton, Graf, Greene & Brown (Mr. Stanley M. Brown* orally), for the plaintiff.

Devine, Millimet, McDonough, Stahl & Branch and *Robert A. Backus (Mr. Joseph A. Millimet* orally), for the defendants.

GRIMES, J. This action for libel was tried before *Morris, J.* and jury resulting in verdicts against each defendant in the amount of $10,000. Alphonse Roy died after the trial and his executrix has appeared.

The action arose out of the publication on September 10, 1960, in the Concord Daily Monitor and New Hampshire Patriot of Drew Pearson's syndicated column "D.C. Merry-Go-Round" which referred to Alphonse Roy who was running in the Democratic primary for nomination as that party's candidate for the United States Senate. The column was distributed by the defendant North American Newspaper Alliance, Inc. (NANA) under a contract with Pearson. The publication complained of read in part as follows: "One of [Democratic candidate for U.S. Senate] Hill's primary opponents, Frank L. Sullivan, was released from the Grasmere County Work Farm just in time to file for the Senate. With a police record of no fewer than 19 convictions for drunkenness since 1945, he was serving his latest 90-day sentence.

"Curious Call

"To fake sure he would get out in time to run for the Senate, a former small-time bootlegger and later U.S. Marshall, Alphonse Roy, telephoned the Grasmere warden about Sullivan.

"Ralph LaVallee, in charge of Grasmere, admitted to this column that he had received a telephone inquiry from Roy as to whether Sullivan would be released in time to file. But the warden denied another report that Roy had announced he was calling 'on behalf of my friend Styles [Bridges, Republican U.S. Senator from New Hampshire].'

" ' I don't want to get implicated in anything like that,' said LaVallee. 'Roy didn't mention Senator Bridges.'

"Sullivan happily got out of the workhouse in time to run for the most distinguished legislative body in the world. And who should turn up on the ballot but the same Alphonse Roy who was so eager to get him out of the clink.

"Because of the peculiar population division of New Hampshire, The Irish Catholics may be inclined to vote for a Frank Sullivan while The French Canadians could be attracted by a name like Alphonse Roy. The effect would be to cut down on Herb Hill's chances."

Plaintiff's declaration made three claims which were treated at the trial as separate counts complaining that; (1) The bootlegger statement imputed criminal conduct; (2) The reference to the Sullivan candidacy imputed improper and unethical conduct by seeking his release from jail and inducing him to run as a straw candidate in the opposite political party by inducing Sullivan to run as a straw candidate.

A verdict was directed in favor of NANA on counts 2 and 3 subject to plaintiff's exception. All three counts were submitted against Monitor, but the jury, in answer to a special question, reported that all of the damages assessed against that defendant were based on the bootlegger count.

The case was tried on the basis that since he was a candidate for the United States Senate, publications about Roy would come under the same constitutional protection as where public officials are involved under *New York Times* v. *Sullivan*, 376 U.S. 254. However, the Trial Court instructed the jury that if they found that the bootlegger publication was a public affair on a par with official conduct of public officials, they were to return a verdict in favor of NANA, and that in considering the case against Monitor they should follow instructions based upon the *New York Times* rule. He also instructed the jury, that if they found that the bootlegger publication would not touch upon or be relevant to Roy's fitness for public office "but was rather a bringing forward of the plaintiff's long-forgotten misconduct in which the public had no interest, then it would be a private matter in the private sector" and that they should consider the claim against both defendants under the law relating to private libels. The verdict against NANA shows that the jury found the publication to be in the private sector, for under the charge if they found otherwise, they were directed to bring in a verdict in favor of NANA.

The main issue in the case as it comes to us, therefore, is whether the bootlegger part of the publication could be found to be a purely private defamation and outside the constitutional protections of the *New York Times* rule which permits recovery only on proof that the publications were knowingly false or that they were false and were published with reckless disregard of the truth.

Reference was made to private libels in *Garrison* v. *Louisiana*, 379 U.S. 64, which arose out of the conviction of Garrison under a Louisiana criminal defamation statute. He had published a statement relating to the eight judges of the Criminal District Court of Orleans Parish in which he attributed the large backlog of cases to the inefficiency,

laziness and excessive vacations of the judges, and impugned their motives in refusing to authorize the use of funds for undercover investigations of vice, which conduct he said raised questions of racketeer influences on the judges.

The Court, in discussing the "good motives" restriction appearing in the laws of many states, said "We need not be concerned whether the limitation serves a legitimate state interest to the extent that it reflects abhorrence that 'a man's forgotten misconduct . . . *in which the public had no interest*, should be wantonly raked up, and published to the world, on the ground of its being true.' " (Emphasis on original) In a footnote (N. 8), the court recognized the different interests may be involved where purely private libels, totally unrelated to public affairs, are concerned and stated that nothing being said was to be taken as an expression of views on the impact of the Constitution in the "discrete area of purely private libels."

We are of the opinion that the constitutional protections of *New York Times* v. *Sullivan* and later cases do not extend to all statements about public officials or candidates for office, but only to those which relate to their official conduct or fitness for office, and that there may be purely private libels against such persons which will be governed by state law, unrestricted by the Federal Constitution. We therefore do not accept the contention of the defendants that the "official conduct" limitation of *New York Times* v. *Sullivan* has been discarded. *Time, Inc.* v. *Hill,* 385 U.S. 374 which dealt with nondefamatory matters as an invasion of privacy is not authority for the defendants' contention. *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130, note 11.

Defendants contend that the bootlegging statement could not be found to be a "purely private defamation." *Garrison* v. *Louisiana, supra.* The evidence fails to reveal that any prosecution for criminal activity of any kind was ever

brought against Alphonse Roy. His only brush with the law was in January 1923 when he was taken to the police station after a raid when he was present in a near beer parlor run by his brother. He was not charged with any violation and was released. This was 37 years before the publications here in question. Since prohibition ended in 1934, it is not probable that the bootlegger statement would be understood to refer to any activity within 26 years of the publication. Although there was evidence that there were rumors in the mid-twenties that plaintiff was a bootlegger, it was findable from the evidence that these had died out before he was elected to the Executive Council in 1932.

Although engaging in criminal activity even such as small-time bootlegging might be difficult to exclude from those things which affect fitness for office if it were alleged to have occurred recently its inclusion as a matter of law becomes less clear with the passage of a long period of time.

We are of the opinion that small-time bootlegging activity which occurred some 26 or 37 years in the past could be found to have lost its relevancy to prove the present fitness or unfitness of a candidate. The Trial Judge must have made this preliminary determination when he decided to submit the issue to the jury, and the jury must have so found when they determined the defamation to have been a private one.

Defendants contend that the Court's charge was so complicated, confused and misleading that the jury probably could not have understood or followed it. Complicated cases may require complicated charges, and this was a complicated case. The verdicts of the jury indicate an understanding of the instructions, and we think it is "reasonably certain that the jury understood them." *McLeod* v. *Caprarello*, 95 N.H. 343, 344; *Locke* v. *Cressy Company*, 108 N.H. 116, 118. We also disagree with the defendants' contention that

in the private sector a lawful occasion existed as a matter of law, and we find no error in the charge relating to private libels. The other contentions of the defendants allege errors in the charge relating to malice and recklessness if the publication were found to be in the public sector. Since this was not the basis of the verdicts, it is unnecessary to consider these contentions.

The plaintiff requests that we determine whether the Court erred in directing a verdict in favor of NANA in the event the jury found the publication to be in the public sector. Since the verdicts were based on a finding that the publication was a private libel, the question is moot.

Judgments on the verdicts.

LAMPRON AND GRIFFITH, JJ., did not sit; the others concurred.

APPENDIX B

Exhibit #1

D.C. MERRY-GO-ROUND

By Drew Pearson Sept. 10, 1960

(Editor's note — While Drew Pearson is taking a short vacation, his column is being written by his associate, Jack Anderson.)

WASHINGTON — With the closing of Congress, most members paid their own fare home or charged it against the two trips they are authorized to take each fiscal year. But a privileged few wangled free transportation from the Air Force.

Those whose committees pass on Air Force legislation and appropriations seemed to have the least trouble finding planes going their way.

The worst offender is South Carolina's brooding, flowing-haired Congressman L. Mendel Rivers, a power on the House Armed Services committee, who seems to regard the Air Force as his private airline. He need only snap his fingers, and the Air Force starts warming up a plane to fly him to his home in Charleston, S.C.

More than once, he has been the sole passenger in a giant C-54 pressed into service as his flying taxi. Sometimes the Air Force even provides attractive WAF hostesses to wait on him.

During the past summer, he has taken only the Air Force flights to South Carolina: one to Charleston in a C-54, the other to Myrtle Beach in a C-47. What cut down on his commuting, however, was a trip to the Far East. He traveled on Air Force planes, of course.

Free List

Here are others who have tumbled free rides home:

Sen. Strom Thurmond, South Carolina Democrat, was flown to Columbia, S.C., after the Senate adjourned. He

had taken earlier trips to the West Coast and Georgia, allegedly on reservist matters.

Congressmen Robert Hamphill of South Carolina and John Flynt of Georgia, both Democrats, were also dropped off near their homes after adjournment.

Earlier, Congressmen O. C. Fisher, Clark Thompson, Jack Brooks, and Bob Casey, all Texas Democrats, flew to Texas in Air Force planes.

Congressmen Charles Diggs of Michigan and Leonard Wolf of Iowa, both Democrats, also caught free flights to their home states.

An Air Force C-54 dropped Senate Armed Services chairman Dick Russell off at his home in Winder, Ga.

New York's blueblood Congressman Stuyvesant Wainright, Republican, saved the return fare from Bermuda by hitching a free ride with the Air Force.

Congressman Perkins Bass, New Hampshire Republican, caught an Air Force plane for the short hop from Washington to New York.

Political Snafu

Rock-ribbed Republican New Hampshire, whose ex- Gov. Sherman Adams was top kick in the White House for years and whose Sen. Styles Bridges is still top kick on the GOP side of the Senate, is so fouled up in a primary snafu that the state may go Democratic this year. The primary verdict is due next Tuesday.

Even that able Senate stalwart, Styles Bridges, is restirring himself. He has nothing to worry about from his Republican opponent, but the Democrats have put up a dynamic Dartmouth professor, Herbert Hill, against him. The professor came within 11,000 votes of defeating Sherman Adams, lately of vicuna-coat fame, in the 1948 gubernatorial race.

Curiously, the Democratic primary has been cluttered with a motley assortment of candidates who have chal-

lenged Hill for the privilege of running against Bridges. That sly, old Republican disclaims any connection with it, but he appears pleased over the muddying of Democratic waters.

One of Hill's primary opponents Frank L. Sullivan, was released from the Grasmere County Work Farm just in time to file for the Senate. With a police record of no fewer than 19 convictions for drunkenness since 1945, he was serving his latest 90-day sentence.

Curious Call

To make sure he would get out in time to run for the Senate, a former small-time bootlegger and later U.S. Marshall, Alphonse Roy, telephoned the Grasmere warden about Sullivan.

Ralph LaVallee in charge of Grasmere, admitted to this column that he had received a telephone inquiry from Roy as to whether Sullivan would be released in time to file. But the warden denied another report that Roy had announced he was calling "on behalf of my friend Styles."

"I don't want to get implicated in anything like that," said LaVallee. "Roy didn't mention Senator Bridges."

Sullivan happily got out of the workhouse in time to run for the most distinguished legislative body in the world. And who should turn up on the ballot but the same Alphonse Roy who was so eager to get him out of the clink.

Because of the peculiar population division of New Hampshire, the Irish Catholics may be inclined to vote for a Frank Sullivan while the French Canadians could be attracted by a name like Alphonse Roy. The effect would be to cut down Herb Hill's chances.

Convicts For Senator

Two other curious candidates, who tried to run in the Democratic primary against Hill, were Harold P. McCarthy who has a record of nine convictions for drunkenness, assault, and brawling, and Clement P. Robinson Jr.,

who has a record of six brushes with the law for drunkenness and traffic violations. Robinson also received a 30-day suspended sentence for stealing two power lawnmowers and a conviction for the nonsupport of his wife and three children.

But at least Professor Hill managed to persuade the New Hampshire Ballot Law Commission into knocking McCarthy and Robinson off the ballot.

The bitterest primary battle, however, is between the two Republican gubernatorial candidates, Gov. Wesley Powell and ex-Gov. Hugh Gregg. Powell not only incurred the ire of Vice President Nixon last winter by riding in front of Nixon in the GOP parade through Manchester, but is also antagonizing stanch Republicans by throwing longtime GOP stalwarts out of state jobs in an attempt to build up a personal Powell machine.

Bernard L. Boutin, ex-Mayor of Laconia who is running for governor on the Democratic ticket, may emerge as the final victor after the smoke has settled.

APPENDIX C

Excerpt from plaintiff's brief in the Supreme Court of New Hampshire, page 12.

"For the purposes of trial of this case, plaintiff's counsel agreed that Roy as a candidate was within the general concept of 'public official' as conceived in *New York Times* . . .

APPENDIX D

Excerpts from the Court's charge to the jury. (Tr. 10:127), (Tr. 10:135).

1. "As to this part of the publication, there is an issue of fact for you to decide. Your determination of this issue of fact will decide where you go in regard to the law as I give it to you:

   Is it more probable than otherwise that the publication that the plaintiff was a former small-time bootlegger was a public affair on a par with official conduct of public officials?

   As a candidate for the United States Senate, the plaintiff was within the public official concept, and a candidate must surrender to public scrutiny and discussions so much of his private character as affect his fitness for office. That is, anything which might touch on Alphonse Roy's fitness for the office of United States Senator would come within the concept of official conduct. If it would not touch upon or be relevant to his fitness for the office for which he was a candidate, but was rather a bringing forward of the plaintiff's long forgotten misconduct in which the public had no interest, then it would be a private matter in the private sector.

   That is, I say this is a question of fact for you to decide on the evidence in the case. The plaintiff has the burden of proving that it is in the private sector."

2. "If you have decided that it is a private defamation, the plaintiff would be entitled to recover, that is you would bring in a verdict for the plaintiff in regard to the private defamation unless the defendants — and the evidence applies to each one of them, all the evidence in the case — unless it is more probable than otherwise that the publication of the defamatory matter was justified or that it was conditionally privileged.

Now, justification is established — and the defendants have the burden of proof, if you are in the private sector on justification — is established if the facts stated are true and are published with a justifiable motive. That is, there are two issues there:
First, whether the published matter is true, and, secondly, whether it is published from a justifiable motive, that is, to give to persons entitled to know the information so they can act upon it."

APPENDIX E

THE STATE OF NEW HAMPSHIRE
Superior Court
Hillsborough, ss. September Term, 1966
Roselle A. Roy, Executrix Under the Will of
Alphonse Roy
vs.
Monitor-Patriot Co.
North American Newspaper Alliance, Inc.
RESERVED CASE

This was an action designated a plea of trespass and libel in which the plaintiff sought to recover damages because of the distribution of the defendant Monitor-Patriot and other newspapers in New Hampshire by the defendant North American Newspaper Alliance (designated in the writ as Bell Syndicate, Inc.), and the publication by the defendant, Monitor-Patriot Co., on or about September 10, 1960 in the Concord Daily Monitor and New Hampshire Patriot, of a certain newspaper column called "D.C. Merry-Go-Round" written by or under the supervision of Drew Pearson. Copy of said column is printed in the appendix.

The plaintiff alleged that the column was defamatory as to him because it was:

> ". . . intended to convey, and did convey, to readers thereof the meanings and impressions (1) that the plaintiff at one time sold, and engaged in the business of selling and illegally transporting, intoxicating liquor, criminal actions in violation of the laws of the United States and the State of New Hampshire, (2) that plaintiff was improperly attempting by underhanded means to secure the release from jail of said Frank L. Sullivan for the purpose of inducing him to run as a straw or fraudulent candidate for the Democratic nomination to the United States Senate, thereby

rigging and fixing this election in favor of plaintiff's own candidacy therein, and (3) that the plaintiff was improperly and unethically cooperating with and assisting a candidate for the same office in the opposing political party, the Republican Senatorial incumbent, Styles Bridges, for money or other consideration, in an attempt to induce said Sullivan to run as a straw candidate in the Democratic primary Senatorial balloting, in order to bolster the re-election prospects of said Bridges by rigging and fixing said election in his favor. . . ."

The defendants filed an answer and an amended answer setting forth a brief statement of defense in addition to the general denial. Among other defenses, the defendants relied upon publication in the ordinary course of business in good faith upon a lawful occasion for a justifiable purpose of informing the public upon matters of public concern, and with reasonable cause to believe that the statements published were true. The defendants denied any malice.

The case was submitted to the jury by treating the three claims of the plaintiff specified above as separate counts. Count One, the so-called bootlegger count, was submitted to the jury as against both defendants. As to the defendant, North American Newspaper Alliance (herein NANA) a verdict was directed for the defendant NANA on both Counts Two and Three. The plaintiff seasonably excepted to the directed verdict on these counts as to the defendant NANA.

The jury returned verdicts for the plaintiff against both defendants. Each verdict was in the sum of Ten Thousand Dollars ($10,000.00).

During the course of the trial, the defendants seasonably excepted to the denials of their motions for nonsuit and directed verdicts, to certain rulings of the Court admitting

and excluding evidence, allowing portions of plaintiff's argument, and disallowing portions of the argument for the defendants, and to certain portions of the Court's charge, and to the failure of the Court to charge as requested, all of which appear more particularly in the transcript. Both defendants objected and excepted to the court's failure to instruct the jury that as to Count One, in order for the plaintiff to recover, he would have to prove that each defendant acted with reckless disregard of the truth or falsity of the statement that the plaintiff was a former small-time bootlegger. Both defendants in taking these exceptions, relied upon the constitutional guarantees of free speech and press contained in the First and Fourteenth Amendments to the Constitution of the United States as interpreted by the United States Supreme Court in *New York Times* v. *Sullivan*, 376 U.S. 254 and subsequent cases cited to the Court.

During the course of the trial the plaintiff seasonably excepted to certain rulings of the Court granting and denying motions, admitting and excluding evidence, allowing and disallowing parts of arguments by counsel, to certain portions of the Court's charge, and to the failure of the Court to charge as requested, all of which appear more particularly in the transcript.

After verdict, the court, over the objection of the defendants, recalled the jury and interrogated them as to what total amount of money they intended the plaintiff to receive. The reply of the foreman is printed in the appendix.

After verdicts, both defendants filed motions for correction of the verdicts on the issue of damages, to set aside the verdict in each case for the plaintiff; and to enter judgment for each defendant notwithstanding the verdict. All of the defendants' motions were denied subject to the defendants' seasonable exceptions. These and other excep-

tions appear in the transcript and the appendix.

All questions of law raised by the foregoing exceptions or any exceptions appearing in the transcript or appendix are reserved and transferred.

The pleadings, including all motions with the court's action thereon, the defendants and the plaintiff's requests for instructions, together with a list of the exhibits transferred, are to be printed as an appendix.

The testimony is to be transcribed and transferred in accordance with the Rules of Court including the Court's charge, arguments and conferences between Court and Counsel.

Reserved and Transferred.

Thomas J. Morris
Presiding Justice